

§736.1**INTRODUCTION**

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in §736.2(a) of this part and upon the general prohibitions described in §736.2(b) of this part. The ten general prohibitions contain cross-references to other parts of the EAR that further define the breadth of the general prohibitions. For that reason, this part is not freestanding. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general

prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

§736.2**GENERAL PROHIBITIONS AND DETERMINATION OF APPLICABILITY**

(a) Information or facts that determine the applicability of the general prohibitions

The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) Classification of the item. The classification of the item on the Commerce Control List (see part 774 of the EAR);

(2) Destination. The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);

(3) End-user. The ultimate end-user (see General Prohibition Four (paragraph (b)(4) of this section) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with);

(4) End-use. The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of the EAR for general end-use restrictions); and

(5) Conduct. Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

(b) General prohibitions

The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bureau of Industry and Security (BIS) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in §744.2(c) of the EAR regarding nuclear end-uses.

(1) General Prohibition One — Export and reexport of controlled items to listed countries (Exports and Reexports). You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart).¹ Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

¹ See part 738 of the EAR for selected controls that are not specified on the Country Chart.

(2) General Prohibition Two — Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (Parts and Components Reexports).

(i) You may not, without a license or License Exception, export, reexport or export from abroad any foreign-made commodity, software, or technology incorporating U.S.-origin commodities, software, or technology respectively that is controlled to the country of ultimate destination if the foreign-made item meets all three of the following conditions:

(A) It incorporates more than the *de minimis* amount of controlled U.S. content, as defined in §734.4 of the EAR concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the Country Chart.)

(ii) Each License Exception described in part 740 of the EAR supersedes General Prohibition Two if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) General Prohibition Three — Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports).

• (i) *Country scope of prohibition.* You may not, without a license or License Exception, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, Libya, or a destination in Country Group